



C.M.A(MD)No.459 of 2015

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.04.2023

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THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.459 of 2015

National Insurance Company Limited,
Thoothukudi Branch,
Through its Branch Manager,
175-A, G.C.Road,
Thoothukudi-1.

... Appellant/3rd Respondent

Vs.

1.Minor.Harihara Vignesh

... Respondent/Petitioner

*(Minor is represented through his father and
natural guardian A.Subramanian)*

2.U.Mahesh

... Respondent/1st Respondent

3.K.Ramachandran

... Respondent/2nd Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, to set aside the judgment and decree passed by the Motor Accident Claims Tribunal, II Additional District Court, Thoothukudi in M.C.O.P.No.137 of 2012, dated 17.12.2012.

For Appellant : Mr.D.Sivaraman

For Respondents : No Appearance



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JUDGMENT

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The present appeal has been filed by the insurance company challenging an award of the Motor Accident Claims Tribunal, Thoothukudi in M.C.O.P.No.137 of 2012 primarily on the ground of liability.

2. According to the injured claimant, he was a pedestrian walking in Thiruvalluvar Salai on 22.07.2010. At 10.45 a.m., a two wheeler driven by the 1st respondent and owned by the 2nd respondent in a rash and negligent manner in violation of the traffic rules and hit the claimant. He sustained injuries and he was hospitalized. The claimant has prayed for a sum of Rs.5,00,000/- towards compensation.

3. The owner and driver of the vehicle have remained ex parte. The insurance company had filed a counter contending that there was no negligence on the part of the respondents 1 and 2. They have also challenged the quantum of the award. The insurance company in paragraph no.8 of the counter has also pointed out that the 1st respondent was not having a valid driving license at the relevant point of time.



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4. The tribunal after considering the oral and documentary evidence arrived at a finding that the accident has happened solely due to the rash and negligent driving on the part of the 1st respondent who rode the offending two wheeler at the time of the accident. The tribunal after considering the evidence of R.W.1 who is the official from RTO office, Tirunelveli arrived at a finding that the driver of the offending vehicle, namely the 1st respondent was not having a driving license at the relevant point of time. The tribunal further found that there is policy violation on the part of the 2nd respondent and therefore, the tribunal directed the insurance company to satisfy the award amount and thereafter, recover the same from the 2nd respondent. This award is under challenge in the present appeal.

5. According to the learned counsel appearing for the appellant, the 1st respondent who had driven the vehicle at the relevant point of time was not having any driving license at all. Under Exhibit R.4, a legal notice was issued to the said driver. However, he had returned the same. Under Exhibit P.6, a legal notice was issued to the owner calling upon him to produce the driving license of the driver. Though he had received the same, no reply was sent by the owner of the vehicle. He had further contended that the official from RTO office, Tirunelveli was examined as



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R.W.1 to establish that the 1st respondent was not having any driving license at the relevant point of time. Therefore, all efforts have been taken on the part of the insurance company to establish that the 1st respondent was not having valid driving license at the relevant point of time. He further contended that once the insurance company establishes that the driver of the offending vehicle did not have any valid driving license, the insurance company should have been exonerated by the tribunal. However, the tribunal has passed an award of pay and recovery which is not legally sustainable.

6. Though the claimant and the driver of the vehicle have been served, there is no representation on their side.

7. The owner of the vehicle has not challenged the award of pay and recovery. The primary contention of the learned counsel appearing for the appellant is that the driver of the offending vehicle, namely the 1st respondent in the claim petition was not having any driving license at the relevant point of time. In view of the violation of policy conditions, the company should have been exonerated by the tribunal. However, it is settled position of law in case of any policy violation, the award has to be first satisfied by the insurance company in favour of the third parties and thereafter, recover the same from the insured person. Therefore, the



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tribunal has rightly awarded pay and recovery. Considering the fact that a sum of Rs.1,68,670/- has been awarded as compensation for the injury sustained by the minor boy, this Court is not inclined to interfere in the quantum of the award. There are no merits in the appeal and the same is dismissed.

8. Hence, this Civil Miscellaneous Appeal stands dismissed. No costs.

25.04.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

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To

- 1.The Motor Accident Claims Tribunal,
II Additional District Court,
Thoothukudi.
- 2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR,J.

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Judgment made in
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